

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEVI MORDEN and ADEEL SIDDIQUI,

Plaintiffs,

vs.

T-MOBILE USA, INC.,

Defendant.

NO. C05-02112 RSM

**ORDER PRELIMINARILY
APPROVING CLASS AND
COLLECTIVE ACTION
SETTLEMENT AND ENTERING
RELATED ORDERS**

WHEREAS, the parties have made application for an order preliminarily approving the settlement of this action as stated in the Settlement Agreement (the "Settlement Agreement" or "Agreement," attached hereto as Exhibit 1), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the litigation and for dismissal of the litigation with prejudice upon the terms and conditions set forth therein;

WHEREAS, the Court has read and considered the Settlement Agreement, the exhibits annexed thereto, and the briefing submitted in support of preliminary approval of the Settlement;

NOW, THEREFORE, IT IS HEREBY ORDERED:

1 1. The Court hereby preliminarily approves the Settlement Agreement and the
2 Settlement set forth therein, including each of its terms, as being fair, reasonable and adequate.
3 The Settlement Agreement is the result of arm's-length negotiations between experienced
4 attorneys who are familiar with class action litigation in general and with the legal and factual
5 issues of this case in particular.

6 2. The Court grants the request to amend the pleadings in this case for settlement
7 purposes to add Jodelle Lloyd, Richard Patla, Dina Olympia, and Chelsea Hunter as plaintiffs
8 and proposed class representatives and to add class allegations based on the state laws of
9 Washington, Connecticut, Pennsylvania, and Maryland. The Court finds that a factual and
10 legal nexus exists between the claims the Plaintiffs seek to add and the claims alleged in the
11 Second Amended Complaint. Plaintiffs are granted leave to file their Third Amended
12 Complaint.

13 3. The Court has considered the pleadings and arguments made by the parties in
14 support of the motion for preliminary settlement approval and finds that the proposed
15 Settlement Class is proper and should be provisionally certified. Solely for purposes of the
16 proposed Settlement, a Settlement Class is hereby provisionally certified pursuant to Federal
17 Rule of Civil Procedure 23 as follows:

18 All T-Mobile Account Representatives ("ARs") and Territory
19 Representatives ("TRs") who have opted into this FLSA action
20 and all individuals who worked for T-Mobile as ARs or TRs (or
substantially similar successor positions) in Illinois, Washington,
Pennsylvania, Connecticut, or Maryland during the Class Period.

21 The "Class Period" is defined as follows: (1) three years back
22 from the date the Class Member's executed consent to join was
23 filed with the Court through the date of preliminary settlement
24 approval for Class Members who opted into the FLSA action; (2)
25 May 5, 2003 through the date of preliminary settlement approval
26 for ARs and TRs who worked for T-Mobile in Illinois; (3) April
27 18, 2005 through the date of preliminary settlement approval for
ARs and TRs who worked for T-Mobile in Connecticut; and (4)
April 18, 2004 through the date of preliminary settlement
approval for ARs and TRs who worked for T-Mobile in
Washington, Pennsylvania and Maryland. If more than one Class

1 Period applies to a particular Class Member, the longer class
2 period applies.

3 The Court specifically finds: (1) the Class is so numerous that joinder is impracticable;
4 (2) questions of law and fact are common to the Class; (3) the claims of the representative
5 Plaintiffs are typical of the claims of the class; and (4) the Class representatives will fairly and
6 adequately protect the interests of the class. Further, in the context of settlement, the Court
7 specifically finds that the proposed Settlement Class meets the predominance and superiority
8 requirements of FRCP 23(b)(3). Certification of the plaintiff Settlement Class for settlement
9 purposes is the best means for protecting the interests of all of the Settlement Class Members.

10 4. Solely for purposes of the proposed settlement, the Court does hereby
11 preliminarily approve Beth E. Terrell of Tousley Brain Stephens PLLC, Steven M. Tindall, of
12 Rukin Hyland Doria & Tindall LLP, Rachel J. Geman, of Lieff, Cabraser, Heimann &
13 Bernstein, LLP, and Douglas Werman, of Werman Law Office as Class Counsel. The Court
14 also hereby preliminarily approves Levi Morden, Adeel Siddiqui, Chelsea Hunter, Dina
15 Olympia, Richard Patla, and Jodelle Lloyd as the Representative Plaintiffs.

16 5. The Court preliminarily approves Plaintiffs' application for payment of attorney
17 fees to Class Counsel of \$600,000.

18 6. The Court preliminarily approves the Plaintiffs' enhancement awards of not
19 more than Five Thousand Dollars (\$5,000) for Plaintiffs Morden and Siddiqui and One
20 Thousand Dollars (\$1,000) for Plaintiffs Hunter, Olympia, Patla, and Lloyd, for a total
21 enhancement award payment of Fourteen Thousand Dollars (\$14,000).

22 7. A hearing, for purposes of determining whether the settlement should be finally
23 approved, shall be held before this Court on Tuesday Feb 5, 2008, at 10:00 a.m., in the
24 Courtroom of the Honorable Ricardo S. Martinez at the U.S. Courthouse, 700 Stewart Street,
25 Seattle, Washington, 98101. At the hearing, the Court will hear arguments concerning whether
26 the proposed Settlement of the Litigation on the terms and conditions provided for in the
27 Settlement Agreement is fair, reasonable and adequate and should be approved by the Court.

1 The Court will also consider Plaintiff's request for an award of attorneys' fees and costs and for
2 enhancement payments to be made to the Representative Plaintiffs.

3 8. The Court approves, as to form and content, the Notice of Pendency of Class
4 Action, Proposed Settlement, and Hearing Date for Court Approval (the "Class Notice") and
5 the Class Member Information Form, annexed as Exhibits A and B, respectively, to the
6 Settlement Agreement, and finds that the distribution of the Class Notice substantially in the
7 manner set forth in ¶7 of this Order meets the requirements of Federal law and due process, and
8 is the best notice practicable under the circumstances and shall constitute due and sufficient
9 notice to all individuals entitled thereto.

10 9. CPT Group is hereby appointed as the Settlement Administrator, and the
11 payment of costs of administration to CPT Group of approximately \$14,500 is hereby
12 preliminarily approved. The Settlement Administrator shall supervise and administer the notice
13 procedure as more fully set forth below:

- 14 (a) Within ten (10) days following the Settlement Administrator's receipt of
15 the class information to be provide by T-Mobile pursuant to Section 16
16 of the Settlement Agreement, the Settlement Administrator shall
17 distribute, by first class mailing to all Settlement Class members, a copy
18 of the Class Notice and Class Member Information Form.
- 19 (b) At least five (5) days prior to the Final Approval Hearing, Class Counsel
20 shall file with the Court a declaration by the Settlement Administrator of
21 due diligence and proof of mailing with regard to the mailing of the
22 notice.
- 23 (c) The Settlement Administrator and Class Counsel shall take reasonable
24 steps to locate Settlement Class members as more fully set forth in
25 Paragraph 17 of the Settlement Agreement.

26 10. All Settlement Class Members who are entitled to opt out of the Settlement
27 Class and do not do so shall be bound by all determinations and judgments in the litigation
concerning the Settlement, whether favorable or unfavorable to the Settlement Class.

11. Any member of the Settlement Class may enter an appearance in the litigation,
at his or her own expense, individually or through counsel of their own choice. Any member of

1 the Settlement Class who does not enter an appearance or opt out of the Settlement Class will
2 be represented by Class Counsel.

3 12. Any Settlement Class Member who wishes to be excluded (opt out) from the
4 Settlement Class and not participate in the proposed settlement must submit a written request
5 for exclusion to the Settlement Administrator which includes the following statement:

6 I wish to opt out of the Settlement of this case, *Morden v. T-*
7 *Mobile USA, Inc.* (U.S. District Court for the Western District of
8 Washington Case No. C05-02112 RSM). **I understand that by**
9 **requesting to be excluded from the Settlement, I will receive**
10 **no money from the settlement funds created in accordance**
11 **with the Settlement Agreement entered into between Class**
12 **Members and T-Mobile.** I understand that if I am excluded
13 from the Settlement, I may bring a separate action. I understand
14 that in any separate lawsuit, I may receive nothing or less than I
15 would have received if I had filed a claim for money pursuant to
16 the Settlement.

17 As to Settlement Class Members who have previously opted into this Lawsuit, their
18 right to opt out of this Lawsuit applies only if they were employed by T-Mobile during the
19 Class Period in the states of Connecticut, Illinois, Maryland, Pennsylvania or Washington, and
20 in addition their opt out will not exclude them from this Lawsuit for the period of time that is
21 covered by their FLSA claims.

22 13. Any member of the Settlement Class may appear at the Final Approval Hearing
23 and show cause, if he or she has any, why the proposed Settlement of the litigation should or
24 should not be approved as fair, reasonable, and adequate, or why a judgment should or should
25 not be entered thereon, or why attorneys' fees should or should not be awarded to Class
26 Counsel, or why the Representative Plaintiffs should or should not receive compensation;
27 provided, however, that no Settlement Class Member or any other person shall be heard or
entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if
approved, the Judgment to be entered thereon approving the same, or, if awarded,
compensation for the Representative Plaintiffs or the attorneys' fees and costs awarded to Class
Counsel, unless that Person has, no later than 30 days after mailing of Notice to the Class, (1)

1 served on counsel for the Class and Defendant written objections, and copies of any papers and
 2 briefs in support thereof, explaining the basis of the objection; and (2) filed these objections,
 3 papers and briefs with the Clerk of the United States District Court for the Western District of
 4 Washington, U.S. Courthouse, 700 Stewart Street, Seattle, Washington, 98101-9906. All
 5 timely filed and served objections shall be considered and ruled upon by the Court at the Final
 6 Approval Hearing. Any member of the Settlement Class who does not timely file and serve his
 7 or her objection in the manner provided above shall be deemed to have waived such objection
 8 and shall forever be foreclosed from making any objection to the fairness or adequacy of the
 9 proposed Settlement as incorporated in the Settlement Agreement and any award of attorneys'
 10 fees and costs awarded to Class Counsel, unless otherwise ordered by the Court.

11 14. All papers in support of the settlement shall be filed and served no later than
 12 Friday, January 25, 2008.

13 15. At the Final Approval Hearing, the Court shall determine whether the proposed
 14 settlement, and any application for attorneys' fees or reimbursement of costs, shall be
 15 approved.

16 16. The Court reserves the right to adjourn the date of the Final Approval Hearing
 17 without further notice to the Settlement Class members, and retains jurisdiction to consider all
 18 further applications arising out of or connected with the proposed settlement.

19 17. If the settlement is voided pursuant to Sections 34 or 35 of the Settlement
 20 Agreement, all proceedings related thereto (including the filing of Plaintiffs' Third Amended
 21 Complaint and the certifications for settlement purposes of the Rule 23 Classes and of Levi
 22 Morden, Adeel Siddiqui, Chelsea Hunter, Dina Olympia, Richard Patla and Jodelle Lloyd as
 23 representative plaintiffs for purposes of Rule 23) shall be without prejudice to the rights of any
 24 party, all of whom shall be restored to their respective positions in the Lawsuit prior to the
 25 settlement; and neither the Settlement Agreement nor any ancillary documents, actions or
 26
 27

1 filings shall be admissible or offered into evidence in this Lawsuit or any other action for any
2 purpose.

3 DONE IN OPEN COURT this _19_ day of November, 2007.

5 

6 RICARDO S. MARTINEZ
7 UNITED STATES DISTRICT JUDGE

8 Presented by:

9 TOUSLEY BRAIN STEPHENS PLLC
10

11
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